TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1924

No. 40

HUBERT WORK, SECRETARY OF THE INTERIOR, APPELLANT,

vs.

THE UNITED STATES EX REL. CHEMICAL FIXATION & CHEMICAL CORPORATION

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

FILED MAY 26, 1924

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 401

HUBERT WORK, SECRETARY OF THE INTERIOR, APPELLANT,

VS.

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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a Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION, relator,
vs. At Law, No. 67884.
HUBERT WORK, SECRETARY OF THE INTERIOR, respondent.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Petition for mandamus.*

Filed July 27, 1923.

In the Supreme Court of the District of Columbia.

THE UNITED STATES OF AMERICA, EX REL. Chestatee Pyrites & Chemical Corporation, et al.,
vs.
HUBERT WORK, SECRETARY OF THE INTERIOR. } At Law. No. 67884.

The petition of the United States on the relation of Chestatee Pyrites & Chemical Corporation respectfully represents:

I.

The relator, Chestatee Pyrites and Chemical Corporation, is a corporation duly and legally organized and existing under the laws of the State of Georgia, a citizen of the State of Georgia residing in the county of Fulton in said State and this petition is brought for a writ of mandamus against the respondent, Hubert Work, a citizen of the State of Iowa, residing in the District of Columbia.

II.

That the said Hubert Work, respondent, was and now is Secretary of the Interior of the United States, and as such charged with the administration of the laws of the United States relative to the war minerals relief claims, and especially section 5 of the act of March
2, 1919 (40 Stat., 1272) as amended by the act of November 23,
2 1921 (Public 99), and is sued in his official capacity as Secretary of the Interior, as aforesaid.

III.

The said respondent as Secretary of the Interior under said section 5 of said act as amended by the act of November 23, 1921, chapter 137, 42 Stat., 322, which act and amendment are here referred to was and is:

"Authorized to adjust, liquidate and pay such net losses as have been suffered by any person, firm or corporation, by reason of

producing or preparing to produce * * * pyrites * * * in compliance with the request or demand of the Department of the Interior * * * to supply the urgent needs of the nation in the prosecution of the war * * *

"The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final; * * *

"And provided further, that said Secretary shall consider, approve and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this act; * * *

"And provided further, that no claim shall be allowed or paid by the said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made, or obligations so incurred by the claimant, were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance."

IV.

The Chestatee Pyrites & Chemical Corporation, between the sixth day of April, 1917, and the twelfth day of November, 1918, in preparing to produce and in producing pyrites in compliance with the request of the Department of the Interior to supply the urgent needs of the nation in the prosecution of the war, made expenditures and incurred obligations in good faith upon property containing pyrites in sufficient quantities to be of commercial importance.

3 V.

As authorized by said act, approved March 2, 1919, section 5 thereof, said Chestatee Pyrites & Chemical Corporation did, on the 5th day of March, 1919, file its claim with the Secretary of the Interior, seeking and praying that an award be made to it of $914,172.73, the net losses incurred by it by reason by producing and preparing to produce pyrites in compliance with the request and demand of agents of the Department of Interior, which sum so claimed represented the net losses from expenditures made and obligations incurred as described in said section 5 of said act.

VI.

In the said petition or claim of Chestatee Pyrites & Chemical Corporation filed on the 5th day of March, 1919, this relator as part of said expenditures made set out and claimed interest paid prior to the 12th day of November, 1918, and set out specifically and by exhibits written contracts made by it wherein it had incurred obligations to pay interest on $695,000.00 borrowed by said relator and expended by it, in a legitimate attempt to produce pyrites for the needs of the nation for the prosecution of the war, in compliance with the request and demand hereinbefore alleged. Thereafter, on October 18, 1919, the Honorable Franklin K. Lane, then Secretary of the Interior, made Chestatee Pyrites & Chemical Corporation an award under said act of March 2, 1919, in the sum of $223,529.17, which award recognized in part the interest paid prior to November

12, 1918, on moneys borrowed by said Chestatee Pyrites &
4 Chemical Corporation, but which award was wholly inadequate and failed to comply with the obligations of said act of March 2, 1919.

VII.

Thereafter, by act approved November 23, 1921, chapter 137, 42 Stat., 322, it was provided:

"That all claimants * * * shall be reimbursed such net losses as they may have incurred, and are in justice and equity entitled to from the appropriation in said act,"

and the Secretary of the Interior was authorized:

"If in claims passed upon under said act (of March 2nd, 1919) awards have been denied or made on rulings contrary to the provisions of this amendment (the amendment of November 23, 1921,) or through miscalculation, the Secretary of the Interior may award proper amounts or additional amounts,"

and the then Secretary of the Interior, Honorable Albert B. Fall, did review the claim of Chestatee Pyrites & Chemical Corporation, relator herein, and did require a complete study of the facts of said relator's claim, and among other things required an investigation thereof by W. H. Dunn, chief accountant in the War Minerals Relief Division of the Department of the Interior.

VIII.

Said W. H. Dunn, by report filed September 21, 1922, found and reported that there had been included in the original claim of the Chestatee Pyrites & Chemical Corporation interest paid, and that said Honorable Franklin K. Lane had in his award included fifty-six and six-tenths per cent of interest paid, to the extent of $31,276.78, and said Dunn further reported that after deducting credits, interest paid and accrued during the stimulation period totaled
5 $40,795.13. (See pages 5, 49, and 120 of the report of said W. H. Dunn.) Chestatee Pyrites & Chemical Corporation showed without dispute that in compliance with the demands and requests of the Government and in a legitimate effort to produce pyrites, it had been compelled to borrow and expend the sum of $695,000, and to agree to pay thereon six per cent interest per annum; that prior to November 12, 1918, it had actually paid interest in a large amount, and there had accrued on said loan further interest that was then unpaid; that since November 12, 1918, to October 18, 1919, the date on which the award of Mr. Secretary Lane was made, further interest had accrued, and since said time on the obligation made prior to November 12, 1918, other interest has accrued.

IX.

The Department of the Interior found, and there is no dispute about the fact, that Chestatee Pyrites & Chemical Corporation, by reason of producing and preparing to produce pyrites, in compliance with the request or demand of the Department of the Interior, to supply the urgent needs of the nation in the prosecution of the war, in good faith expended money and incurred obligations in response

to such request and demand, and that such expenditures so made and obligations thus incurred by the Chestatee Pyrites & Chemical Corporation were made in good faith upon property which contained pyrites in sufficient quantities to be of commercial importance; and there is no dispute between the Department of the Interior and said Chestatee Pyrites & Chemical Corporation as to the right
6 of said Chestatee Pyrites & Chemical Corporation to receive an allowance and award for its net losses suffered as a consequence of its compliance with said request and demand.

X.

After the report of said W. H. Dunn, argument was had before the Honorable Albert B. Fall, then Secretary of the Interior, and on the 28th day of September, 1922, as authorized by the law, said Secretary of the Interior made an award of $469,784.62 in addition to the award theretofore made by the Honorable Franklin K. Lane, said award being based upon the finding of John Bryar, Assistant Commissioner of the Department of the Interior.

XI.

Said John Bryar, on whose report the said award was made, at page 21 thereof found that there should be deductions from the expenditures made of interest in the amount of $40,795.13, and that amount of expenditures made was disregarded in said report and subsequently disregarded in the award of the Secretary of the Interior. Neither in the report of said Assistant Commissioner nor in the award of the Secretary of the Interior was there any allowance made for obligations incurred to pay interest, and the Chestatee Pyrites & Chemical Corporation, relator herein, was denied a recovery for its expenditures made prior to the armistice, and for its obligations incurred thereafter to the extent that such expenditures represented payments of interest on said loan of $695,000.00, and to the extent that said obligations incurred represented interest on the remainder of said sum. The finding of the Honorable
7 Albert B. Fall, then Secretary of the Interior, is as follows:

"The Chestatee Pyrites and Chemical Corporation, Sept. 28, 1922. Atlanta, Georgia.

Claim No. 1.

"Additional memoranda by the Secretary, to be attached to the records of the Assistant Commissioner as part of the record herein.

"I have investigated this case and listened with great interest and a large degree of sympathy to the statements made by counsel for claimants, and to the arguments advanced with reference to the matter of allowing interest upon this claim; additional allowance for services, and an allowance of an increased amount for compensation for prestimulation plant.

"After full consideration, I am confident that the conclusions reached by the commission are as nearly correct as it is humanly possible to arrive at a just and equitable sum to be rewarded in relief. I, therefore, find myself impelled to make the award as recommended, in the sum of four hundred sixty-nine thousand seven hundred eighty-four dollars and sixty-two cents ($469,784.62).

"If the Congress contemplated the payment of interest upon this claim, as has been suggested in argument, then this award, of course, does not preclude remedial action by the Congress of the United States acting directly.

(Signed) ALBERT B. FALL,
"*Secretary of the Interior.*"

XIII.

Your relator further shows that it again brought its claim that a proper construction of said act provided for losses caused by the payment of interest to the attention of the Department of the Interior before the retirement of Secretary Fall, with the request that one of three courses be pursued:

"First, that the question might be again considered by the department; second, that the question of interest might be referred to the Department of Justice; or, third, that the question of interest might be submitted to the Court of Claims."

8 Secretary Fall did not pass upon this application, but left the matter for the consideration of his successor, the Hon. Hubert Work.

XIIIa.

After the appointment of Hon. Hubert Work to the position of the Secretary of the Interior your relator, Chestatee Pyrites & Chemical Corporation, brought to the attention of the present Secretary its right to recover for the expenditures made and obligations incurred to pay interest, but the said Honorable Hubert Work refused to make any allowance for such interest expenditures or obligations, as had his predecessors, and, as had his predecessor, Albert B. Fall, held as a matter of law and as a construction of the law, that said expenditures and obligations for interest are not within the provisions of said act of March 2, 1919, as amended by the act of November 23, 1921, and refused to refer the question to the Department of Justice or the Court of Claims.

XVI.

Your relator, hereinbefore named, shows that the respondent's refusal to adjudicate its expenditures and obligations for interest incurred in good faith, as hereinbefore set out, and respondent's denial of his power and authority to award and pay net losses caused thereby is a clear mistake and plain misunderstanding of the unambiguous terms of said section 5 of the act of March 2, 1919, as amended by the act of November 23, 1921. Your relator shows that the right of the courts to pass upon a question of

9 law involving construction of an act of Congress can not, under the Federal Constitution, be taken from the courts, and respondent's nonaction can be reviewed and his disregard of the law corrected only by mandamus.

XVII.

Wherefore petitioner, on behalf of the relator aforesaid, prays:

1. That a writ of mandamus may be issued directing respondent, Hubert Work, Secretary of the Interior, to take jurisdiction of the claim of the relator for expenditures made and obligations for

interest incurred in good faith, as hereinbefore set forth, and to allow such sum as may be just and equitable, and to adjust and pay relator's net losses, consisting of interest, thus arising in preparing to produce said ores at the requests and demand of the Department of the Interior, and to ascertain the amount thereof and make award therefor.

2. That a rule may issue requiring respondent Hubert Work, Secretary of the Interior, to show cause, if any he can, why the writ of mandamus should not issue herein as prayed.

CHESTATEE PYRITES AND CHEMICAL CORPORATION,
By GEO. L. PRATT,
Vice Prest., Treas.

STATE OF GEORGIA, *County of Fulton, ss.:*

George L. Pratt, being duly sworn, deposes and says that
10 he is vice president and treasurer of Chestatee Pyrites & Chemical Corporation, and as such is authorized to file this petition and make this affidavit: that he has read and knows the allegations in said petition, and that the same are true, except where stated on information and belief, and when so stated he believes them to be true.

GEO. L. PRATT.

Subscribed and sworn to before me this 19 day of July, 1923.
[SEAL.] A. R. DYER,
Notary Public, Georgia, State at Large.
My commission expires February 24, 1926.
HOKE SMITH, Washington, D. C.,
EDGAR WATKINS, Atlanta, Ga.,
Attorneys.

Upon consideration of the petition filed in the above entitled cause it is by the court this 27 day of July, 1923, ordered that the respondent Hubert Work, Secretary of the Interior, be, and he is hereby required, to show cause, if any he can, on or before the 15 day of August, 1923, at ten o'clock a. m., why this writ of mandamus should not issue, as in the petition prayed, provided that a copy of said petition and of this order be served upon him on or before the 1st day of August, 1923.

JENNINGS BAILEY.

Service accepted 31 July, 1923.

C. EDW. WRIGHT,
Atty. for the Secy. of the Interior.

11 *Respondent's answer.*

Filed September 15, 1923.

* * * * * * *

Comes now the respondent and in answer to relator's petition herein filed, as well as by way of return to the rule to show cause herein issued, says:

1. He admits the allegations of paragraph 1 except that respondent is a citizen of the State of Colorado and not of Iowa as alleged.

2–4. He admits the averments of paragraphs 2 to 4, inclusive.

5. He admits the averments of paragraph 5 except that the correct amount of the award prayed by the relator was $914,172.73, instead of $919,172.73, the amount alleged in said paragraph.

6. Answering the averments of paragraph 6, he states the facts to be as follows: That the sum of relator's claim as filed with the Secretary of the Interior, as alleged, was $914,172.73 recapitulated in the said claim as follows:

"United States to claimants, debtor.

To improvements, machinery, etc., paragraph 10 above		$909,925.69
To cost of financing, paragraph 12		230,000.00
		1,139,925.69
CREDITS.		
By apparent profits, paragraph 13	$25,752.96	
By salvage, paragraph 14	200,000.00	
		225,752.96
Net loss due		914,172.73"

That the items comprising the sum of $909,925.69 aforesaid
12 were displayed in a balance sheet attached to relator's said claim as Exhibit "B," referred to in paragraph 10 of said claim; that none of said items set out or displayed any claim for interest whatever; that the item "Cost of financing, paragraph 12," as exhibited in said claim, made no mention of interest; that the said "paragraph 12" was as follows:

The payments thus made, as shown in paragraph 11, and the obligations thus incurred in order to comply with the request and demand of the Department of the Interior exceed by $230,000 the amount which claimants would have paid and incurred in financing the completion of their original plan to invest only $250,000 for the whole enterprise. A copy of claimants' original financing contract, dated March 14, 1917, is attached hereto, marked Exhibit "D."

That the paragraph 11 therein mentioned was in words and figures as follows:

In order to obtain the money necessary to make said improvements claimants by a contract of date May 6, 1918, have paid and contracted to pay as follows: The sum of one dollar and twenty-five cents ($1.25) per long ton on the first one hundred twenty thousand (120,000) long tons of ore sold by Ashcraft-Wilkinson Company, or sold or used by Chestatee Pyrites and Chemical Corporation since March 14, 1917, and the sum of one dollar ($1) per long ton for the next ninety thousand (90,000) tons, and the sum of seventy-five cents ($0.75) per long ton on the next one hundred twenty-five thousand (125,000) tons. A copy of said contract is attached hereto marked Exhibit "C."

That while the contracts referred to in said paragraphs mention interest on moneys advanced by the Ashcraft-Wilkinson Company, the import of said contracts was the constitution of the said Ashcraft-Wilkinson Company as the exclusive selling agent of the relator, and the obligations specifically mentioned in the "paragraph 11" aforesaid were stated in said contract to be "as compensation for its services." Further answering he says that upon consideration
13 of said claim so filed, it was ascertained and determined, by the then Secretary of the Interior, Franklin K. Lane, that the

sum of $223,529.17 was justly and equitably due the relators; that in reaching this result the cost of a railroad ($258,756.83), one of the items making up the sum total of said claim, was excluded on the ground that its construction was not induced by Government stimulation so as to make the loss incident thereto repayable under the war minerals relief act; that the item of $230,000, "cost of financing" aforesaid was likewise ruled against on the ground that while only a part of the specified tonnage had been sold, the claim was for commission upon the entire amount; that a further item of $29,000 for salaries of the executives was also disallowed on the ground that the same would constitute a profit excluded by the terms of the war minerals relief act; and that, in fine, Secretary Lane made said award of $223,529.17 based upon a certain percentage (56.6%) which percentage in his estimation represented the proportion of the total loss sustained by the relator accruing during the period from which the claimants were stimulated or asked by the Government to produce, to the armistice; that the said percentage was applied to the sum of $382,626.58 which on audit was ascertained to be the amount lost on power plant, mill, development, buildings, etc., and also upon a 10% commission for financing; that in no part of the award made by Secretary Lane was the item of interest mentioned or passed upon. He denies the allegation in paragraph 6 of the petition that said award of $223,529.17, or any award, recognized in part the interest paid prior to November 12, 1918, and he avers that said interest
14 was not included in said claim save as it was prorated as an overhead charge among the several items composing the relator's claim and in such disguise inadvertently and unwittingly allowed by Secretary Lane.

7. He admits the averments of paragraph 7.

8. Answering the averments of paragraph 8 he admits that the said Dunn in his report stated that Secretary Lane had included 56.6% of $31,276.78, interest on loans, in his award; but the said Dunn further reported, in this connection, that the same was "unwittingly included," due to an error in the details of the grouping of items "labor, materials, overhead, freight, etc." on the auditor's master sheets adopted by the chief accountant of the War Minerals Relief Commission; which said grouping likewise erroneously included the item of 56.6% of $29,000 for executive salaries, distributed as overhead, although Secretary Lane understood, and expressly so stated in his award, that he was allowing nothing on account of said salaries. He admits the other allegations of paragraph 8.

9–10. He admits the allegations of paragraphs 9 to 10, inclusive.

11. Answering the averments of paragraph 11, he states that when the relator's claim was before Secretary Fall on review as alleged in paragraph 7 of the petition herein, the contention of the relator was that the percentage theretofore fixed in ascertaining the net loss of the relator was too low and that the percentage should apply to all and not to a part only of the expenditures claimed to have been made by it. Thereupon the entire claim was considered de novo.
15 In lieu of a percentage of the whole expenditure, taken to cover the period of stimulation, the auditor for the Government and the auditor for the relator examined all items and agreed that the total amount of expenditure during the stimulation period, i. e., from June 18, 1917, to November 11, 1918, date of the armistice,

was $784,791.14; said amount included amount of ore sales, executive salaries, interest, taxes, a small real estate purchase, and legal services, amounting to $151,010.18. That with these figures as the basis, the assistant war minerals commissioner, John Briar, made the findings averred in paragraph 10 of the petition, and reported the same to the Secretary of the Interior, Albert B. Fall, who, after hearing duly accorded the relator, found and concluded that the additional sum of $469,784.62 was the just and equitable sum to be awarded in relief for the net losses sustained by the relator. He further avers that in making said award, it was concluded that the cost of construction of relator's railroad, theretofore disallowed, was properly chargeable to stimulation, and hence was allowed. But the cost of executive salaries, certain real estate, and the amount paid for interest, taxes, and legal services, together with the amount of ore sales and the salvage value of the property to the time of the armistice, were considered and determined not to be a part of the net losses justly and equitably due and payable to the relator under the relief acts of Congress, and were deducted from the total expenditures, together with the amount of award theretofore made by Secretary Lane as aforesaid, in ascertaining and determining the amount of the additional award, to-wit, the sum of $469,784.62 aforesaid. Subject to this explanation, he admits the averments of paragraph 12.

13. He admits the allegations of paragraph 13.

14. Answering the averments of paragraph 14, he admits that relator brought to his attention the matter of reimbursement of interest on borrowed capital, and that, on March 23, 1923, he refused to make allowance for interest as a sum justly and equitably due the relator, in a communication addressed to the attorney for relator in words and figures as follows:

DEAR MR. SMITH: Acknowledgment is made of your communication of the 28th ult., in relation to reimbursement of interest on borrowed capital to claimants under the war minerals relief act. You ask that the question of such reimbursement be reopened by the Secretary of the Interior, and by him again considered; and as alternatives you suggest that the question be referred either to the Department of Justice or the Court of Claims.

In reply I beg to state that the question of repayment of interest charges in war minerals relief claims has had full consideration by the department. In the case of the Chestatee Pyrites claim, to which you refer particularly, the question of interest was covered by briefs and by oral argument both before the commissioner and the Secretary of the Interior. The Secretary, on September 29, 1922, held that allowance of interest was not warranted, under the act, and suggested that if Congress intended to include expenditures for interest on borrowed capital, as suggested by counsel, claimant was not precluded from relief by Congress direct.

All war mineral relief claims have been and are being adjusted as to interest in accordance with the policy outlined by the Secretary in his final decision in the Chestatee claim. Under the circumstances, I feel that my predecessors have, so far as the department is concerned, settled the question finally.

15. Answering the averments of paragraph 16, he denies that he and his predecessors in office have refused to adjudicate the relator's

claim in so far as it involves expenditure and obligation for
17 interest incurred, and, on the contrary, avers the fact to be that he has considered and adjudicated said claim and has found and determined that the said items of interest, the amount of which has been computed and determined, and is known to him, are no part of the amount of losses which he can regard or does regard as justly and equitably due from the United States to the relator under the provisions of the acts of March 2, 1919, and November 23, 1921. He avers that he and his predecessors in the office of Secretary of the Interior have considered each and every element or item of alleged loss exhibited in relator's claim and have found, adjusted, and ordered payment to be made of the amount of relator's net loss determined by the Secretary to be just and equitable and therefore due and payable under the provisions of said acts, to wit, the total sum of $693,313.79, for which warrants have issued to the relator and the said amount has been duly paid to and accepted by the relator

Wherefore, having made complete answer to the petition and to return to the rule to show cause he prays that said rule may be discharged, that the said petition may be dismissed, that he may have judgment for his reasonable costs and be permitted to go hence without day.

HUBERT WORK,
Secretary of the Interior.

C. EDWARD WRIGHT, *Attorney.*

DISTRICT OF COLUMBIA, *ss.:*

Hubert Work, Secretary of the Interior, being first duly
18 sworn says that he has read over the foregoing answer by him subscribed and knows the contents thereof; that he is informed that the matters of fact therein set forth are true and he believes them to be true.

HUBERT WORK,
Secretary of the Interior.

Subscribed and sworn to this 14th day of September, 1923, before me.

[SEAL.] W. BERTRAND ACKER,
Notary Public in and for the District of Columbia.

Demurrer.

Filed October 10, 1923.

* * * * * * *

Comes now the relator, by his attorney, and says that the answer of the defendant to the rule to show cause issued in the above cause is bad in substance.

NOTE.—Points to be argued:

1. Interest paid and contracted to be paid in a legitimate attempt to produce pyrites at the request of the Department of the Interior is a proper item to be considered in determining the net losses of the relator.

2. The rulings of Secretary Fall and the respondent that the items of interest are no part of the amount of the losses which are justly and equitably due from the United States to the relator under the provisions of the acts of Congress of March 2, 1919, and November 23, 1921, are plainly erroneous, and amount to a refusal to take

19 jurisdiction of petitioner's claim for interest or to exercise relative thereto any discretion under the statute, and are a nullification of the plain intention of Congress.

3. The court has authority to construe the acts of Congress of March 2, 1919, and November 23, 1921, and to compel the respondent to take jurisdiction of relator's claim for interest, to hear proof, to ascertain relator's loss, if any, and to pay the amount thereof.

HOKE SMITH,
Attorney for Relator.

To C. EDWARD WRIGHT, Esq.,
Attorney for Respondent.

Take notice that the foregoing demurrer will be for hearing on the 19th day of October, 1923, at ten o'clock a. m., or as soon thereafter as same may be heard.

HOKE SMITH,
Attorney for Relator.

Motion for leave to amend petition.

Filed October 15, 1923.

* * * * * * *

Comes now the relator, by his attorney, and moves the court for leave to amend his petition heretofore filed, as follows:

By adding to said petition the following:

PARAGRAPH 18. That the financing contracts made between relator and Ashcraft-Wilkinson Company were for both the services
20 of Ashcraft-Wilkinson Company in selling the ore at a fixed price, and for interest at the rate of six per cent per annum upon money loaned; and the obligation incurred to pay interest was in no sense payment for services, but was payment for the use of the money advanced by Ashcraft-Wilkinson Company and procured by them by their endorsement for the use of relator, said financing contract having provided specifically that the money advanced "shall be evidenced by promissory notes of said corporation, endorsed by N. P. Pratt and George L. Pratt, and said notes shall bear interest from date until paid at the rate of six per cent per annum." A copy of the financing contract which contained the foregoing provision was made an exhibit to the original claim of the relator, which was filed with the Secretary of the Interior on the 5th day of March, 1919.

PARAGRAPH 19. Your relator, in its original claim, filed March 5, 1919, presented a claim in which the items were not definitely named, and in which total expenditures shown on a balance statement were relied upon. In these total expenditures all interest that had been paid up to and including the date of the balance statement was included. Subsequently, in the argument before the commissioner appointed by Mr. Secretary Lane, the right to include interest as a part of net losses was claimed, the law with reference thereto discussed, and authorities cited in support of the claim for interest. After the commissioner appointed by Mr. Secretary Lane had made an allowance exceptions were taken in the nature of an appeal to the Secretary, and in these exceptions interest was specifically claimed as a part of the net losses.

21 PARAGRAPH 20. Subsequent to the filing of the original claim, the amounts of interest which relator was compelled

to pay and for which relator became obligated increased, and the amount of the claim for interest was enlarged, due to the fact that the original award did not cover the losses of claimant or enable claimant to pay for the sums which it had borrowed, as set forth in its petition.

HOKE SMITH,
Attorney for Relator.

Memorandum of court.

Filed January 9, 1924.

* * * * * * *

Hearing on demurrer to respondent's answer to petition for mandamus.

The petition prays:

"That a writ of mandamus may be issued directing respondent, Hubert Work, Secretary of the Interior, to take jurisdiction of the claim of the relator for expenditures made and obligations for interest incurred in good faith, as hereinbefore set forth, and to allow such sum as may be just and equitable, and to adjust and pay relator's net losses, consisting of interest, thus arising in preparing to produce said ores at the requests and demand of the Department of the Interior, and to ascertain the amount thereof and to make award therefor."

The answer of the respondent avers that the Secretary of the Interior:

"On September 29, 1922, held that allowance of interest was not warranted, under the act, and suggested that if Congress intended to include expenditures for interest on borrowed capital, as suggested by counsel, claimant was not precluded from relief by Congress direct."

The demurrer to this answer raises practically a single ques-
22 tion of law, which is stated in point two of the demurrer as follows:

"The rulings of Secretary Fall and the respondent that the items of interest are no part of the amount of the losses which are justly and equitably due from the United States to the relator under the provisions of the Acts of Congress of March 2, 1919, and November 23, 1921, are plainly erroneous, and amount to a refusal to take jurisdiction of petitioner's claim for interest or to exercise relative thereto any discretion under the statute, and are a nullification of the plain intention of Congress."

In the court's opinion the question, in principle, has been settled by rulings of the appellate tribunals, controlling upon this court, and which require that the demurrer be sustained:

Secretary of the Interior vs. U. S. ex rel. Logan Rives, #4020, ——, App. D. C. ——, decided January 7, 1924.

Seaboard Air Line Railway Co., et al. vs. U. S., #407, Oct. Term, 1922, U. S. Supreme Court; decided March 5, 1923.

U. S. vs. State of N. Y., 160 U. S. 598.

Demurrer sustained.

F. L. SIDDONS, *Justice.*

January 9, 1924.

23 Supreme Court of the District of Columbia.

WEDNESDAY, JANUARY 9TH, 1924.

Session resumed pursuant to adjournment, Mr. Justice Siddons presiding.

* * * * * * *

Upon consideration of the demurrer of relator filed herein, to answer of defendant to rule to show cause issued herein, it is ordered that said demurrer be, and it is hereby sustained.

FRIDAY JANUARY 25TH, 1924.

Session resumed pursuant to adjournment, Mr. Justice Siddons presiding.

* * * * * * *

Come now the parties hereto by their respective attorneys of record and thereupon, respondent by his said attorney states to the court that he does not care to amend but will stand upon his answer, to which the court sustained a demurrer on the 9th day of January, 1924.

Whereupon it is considered that the prayers of the petition be granted, that the writ of mandamus issue as therein prayed, and that the petitioner recover of respondent his costs of suit, to be taxed by the clerk, and have execution.

From the foregoing judgment the respondent by his said attorney in open court notes an appeal to the Court of Appeals of the District of Columbia.

Attorney for respondent moved that issuance of writ of mandamus be stayed pending appeal, which is hereby ordered.

24 *Assignment of errors.*

Filed January 25, 1924.

* * * * * * *

The court erred:

1. In sustaining relator's demurrer and awarding the writ of mandamus.

2. In failing to hold that the respondent took jurisdiction of relator's entire claim, including the item of interest, and in the exercise of his discretion in a matter wholly within his jurisdction had found and determined that relator's claim for interest was not a loss justly and equitably repayable, and that said judgment was final and conclusive and beyond the power of the court to review.

3. In failing to hold that the respondent made adjustment and payment of relator's claim for net losses in such sum as the respondent had determined to be just and equitable and that the respondent's decision in that respect was conclusive and final.

4. In construing the acts of March 2, 1919, and November 23, 1921, so as to include interest on losses as a part of the net losses repayable under said acts, contrary to the construction relied upon by the respondent in arriving at the amount of relator's net losses justly and equitably to be allowed by him, the said respondent, under said acts.

5. In failing to hold that the act of November 23, 1921, did not enlarge relator's rights to recover and did not afford him any new or additional remedy permitting any payment not theretofore allowable under the act of March 2, 1919.

6. In failing to hold that the action in substance is a suit against the United States which in this behalf has expressly withheld consent to be sued.

7. In failing to dismiss the relator's petition.

C. EDW. WRIGHT,
Attorney for respondent.

Designation of record.

Filed January 25, 1924.

* * * * * * *

The clerk in making up the transcript of record on appeal in the above-entitled action will include the following:

1. Relator's petition and the rule to show cause.
2. Respondent's answer.
3. Relator's amendment to the petition.
4. The demurrer to the answer.
5. Memorandum opinion of the court.
6. Order sustaining demurrer.
7. Judgment awarding mandamus.
8. Notation of appeal.
9. Assignment of errors.
10. This designation.

C. EDW. WRIGHT,
Attorney for respondent.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, Morgan H. Beach, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 25, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 67884 at Law, wherein The United States of America, ex rel. Chestatee Pyrites & Chemical Corporation, is relator and Hubert Work, Secretary of the Interior, is respondent, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 5th day of February, 1924.

[SEAL.] MORGAN H. BEACH,
Clerk.

EW.

(Endorsed on cover:) District of Columbia, Supreme Court. No. 4116. Hubert Work, Secy., &c., appellant, vs. The United States of America ex rel. Chestatee Pyrites & Chemical Corporation. Court of Appeals, District of Columbia. Filed Feb. 7, 1924. Henry W. Hodges, Clerk.

○

15 In Court of Appeals of District of Columbia

Minute entry, filed April 7, 1924

HUBERT WORK, SECRETARY OF THE INTERIOR, APPELLANT,
vs.
THE UNITED STATES OF AMERICA EX REL. CHESTATEE Pyrites & Chemical Corporation.
No. 4116.

The argument in the above-entitled cause was commenced by Mr. C. E. Wright, attorney for the appellant, and was continued by Messrs. Hoke Smith and Edgar Watkins, attorneys for the appellee, and was concluded by Mr. C. E. Wright, attorney for the appellant.

16 In Court of Appeals of the District of Columbia

[Title omitted.]

Opinion

Before Associate Justices Robb and Van Orsdel; Martin, Presiding Judge, U. S. Court of Customs Appeals.

Mr. Justice Van Orsdel delivered the opinion of the court:

This appeal is from a judgment of the Supreme Court of the District of Columbia granting a writ of mandamus directing respondent, The Secretary of the Interior, to take jurisdiction of the claim of relator, appellee company, for interest paid on money borrowed to enable relator company to comply with requests and demands made upon it by the Department of the Interior, under the act of Congress of October 5, 1918, 40 Stat. 1009.

17 It appears that when the United States entered the War relator was the owner of a pyrites mine which it operated on a limited scale. In compliance with the demand upon it by the Government, in the way of enlargement of its plant to meet the war necessities, it was compelled to borrow the sum of $695,000 on which it obligated itself to pay interest at the rate of 6% per annum.

A claim was made by relator under the act of Congress approved March 2, 1919, 40 Stat. 1272, as amended by an act approved November 23, 1921, 42 Stat. 322, for reimbursement for the loss sustained by reason of its compliance with said request or demand. After three separate hearings and adjudications in the Department of the Interior, relator was awarded $693,313.79. In making the award the item for interest on the $695,000, borrowed as aforesaid, was disallowed. It is to compel the adjudication and allowance of this claim that the present suit was brought.

At the outset we are confronted by the oft-repeated contention of counsel for respondent, that the action of the Secretary of the Interior, in adjusting relator's claim for the net loss sustained, is final

and conclusive, and not subject to judicial review. The whole question of jurisdiction to direct by mandamus the adjudication
18 and allowance of claims arising under the present statute, was disposed of by this court in the recent case of Work, Secretary of the Interior vs. United States ex rel. Rives, — App. D. C. — 925 Fed. 225. There as here, the Secretary refused to consider the claim on its merits on the ground that under the statute it was not allowable. There was, therefore, no determination of fact made. Whatever the provision in the statute "that the decision of said Secretary shall be conclusive and final" may mean it has no bearing upon this case, since no adjudication upon the merits was made. The claim was disallowed solely upon the ground that there was no statutory authority for the adjudication and allowance of such a claim. We are called upon, therefore, to review merely the interpretation placed upon the statute by the Secretary, not to review an adjudication based upon issues of fact.

This narrows the case to the single question of law, whether the item of interest is embraced within the claim for net losses incurred by relator. The statute, among other things, provides: "That all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said act, in good faith expended money in producing or preparing to produce any of the ores or minerals
19 named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation in said act."

Closely analogous to the situation here presented is a case arising out of the Civil War, where the Secretary of State, to meet a war emergency, called upon the State of New York to "adopt such measures as may be necessary to fill up your regiments as rapidly as possible. We need the men. * * * The Government will refund the State for the advances of troops as speedily as the Treasurer can obtain funds for that purpose." Subsequently Congress passed an act providing for the reimbursement of any State raising troops to protect the Nation for "the costs, charges, and expenses properly incurred."

To meet the call from the Government, the State of New York appropriated money to arm and equip troops, and issued 7% bonds to raise the money. In adjusting the claims of the State, the department reimbursed it for the amount actually expended, but
20 refused to pay the interest which the State had to pay on its bonds. The facts in that case are the same as in this, excepting that in this case the relator corporation is claiming for interest which it had to pay on its notes. The Supreme Court, in United States vs. State of New York, 160 U. S. 598, 620, holding the Gov-

ernment liable for the interest, said: "It would be a reflection upon the patriotic motives of Congress if we did not place a liberal interpretation upon those acts, and give effect to what, we are not permitted to doubt, was intended by their passage. * * * Liberally interpreted it is clear that the acts * * * created, on the part of the United States, an obligation to indemnify the States for any costs, charges, and expenses properly incurred for the purposes expressed in the act of 1861, the title of which shows that its object was 'to indemnify the States for expenses incurred by them in defence of the United States.'"

This is not a claim for interest upon an amount due the relator from the Government, but for expenses incurred in performing certain duties required of it by the Government. It is not compensation for the use of money due the claimant from the Government, but for money paid by relator in order to secure the means with which to meet the demands made upon it by the Government. As
21 was said in the New York case: "We can not doubt that the interest paid by the State on its bonds, issued to raise money for the purposes expressed by Congress, constituted a part of the costs, charges, and expenses properly incurred by it for those objects. Such interest, when paid, became a principal sum, as between the State and the United States: that is, became a part of the aggregate sum properly paid by the State for the United States. The principal and interest, so paid, constitutes a debt from the United States to the State." Being, therefore, an element of the expenses incurred, we think that in equity and justice the interest paid or obligated to be paid in this case, should be allowed. The statute is remedial, and should be construed liberally in order to carry out the purposes of its enactment.

The judgment is affirmed with costs.

22 In Court of Appeals of District of Columbia

[Title omitted.]

Judgment

Filed May 5, 1924

Appeal from the Supreme Court of the District of Columbia. This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. JUSTICE VAN ORSDEL.

May 5, 1924.

Presiding Judge George E. Martin of the U. S. Court of Customs Appeals sat in this case in the place of Mr. Chief Justice Smyth.

23 In Court of Appeals of the District of Columbia

[Title omitted.]

Petition for writ of error

Filed May 16, 1924

Comes now Hubert Work, Secretary of the Interior, appellant in the above-entitled cause and respectfully shows that on or about the 5th day of May, 1924, this court entered a judgment herein in favor of the appellee and against the appellant, affirming the judgment of the Supreme Court of the District of Columbia in favor of appellee, in which judgment of the Court of Appeals certain errors were committed to the prejudice of the appellant, all of which will appear more in detail from the assignment of errors filed with this petition.

The appellant further shows that judgment of the Court of Appeals in this case is subject to review by the Supreme Court of the United States under the provisions of paragraph 5 of section 250 of the Judicial Code in that existence and scope of a power or duty of an officer of the United States, to wit, the Secretary of the Interior, are drawn in question.

The appellant further shows that the judgment of the Court of Appeals is reviewable by the Supreme Court of the United States under the provisions of paragraph 6 of said section 250 of the Judicial Code, in that the construction of certain acts of Congress, to wit, the 5th section of the act of March 2, 1919 (40 Stat. 1272), and the act of November 23, 1921 (42 Stat. 322), was drawn in question by the appellant, who was the defendant below, and who

24 asserted and relied upon a construction of said statutes contrary to that placed thereon by the Court of Appeals in its judgment herein.

Wherefore appellant prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States, and that the mandate of this court be stayed until further order.

HUBERT WORK,
Secretary of the Interior.

By his attorney:

C. EDWARD WRIGHT,
Attorney.

25 In the Court of Appeals of the District of Columbia

[Title omitted.]

Assignment of errors

Filed May 16, 1924

And now comes the appellant by his attorney and says that in the record and proceedings of the Court of Appeals in the above-entitled cause and in the rendition of final judgment therein, manifest error has intervened, to the prejudice of said appellant, in this:

1. The court erred in affirming the judgment below.

2. The court erred in failing to hold that the Secretary took jurisdiction of appellee's claim and rendered judgment therein as to the amount of net losses by the Secretary deemed to be just and equitable and liquidated and paid the same to the appellee; and that the decision of the Secretary in making said allowance was conclusive and final.

3. The court erred in taking jurisdiction to review the Secretary of the Interior in a matter wholly within his jurisdiction and in which his judgment is by the statute made final and conclusive.

4. The court erred in holding that the acts of March 2, 1919, and November 23, 1921, require the Secretary of the Interior to allow interest paid or obligated on money borrowed as a part of the appellee's net losses for which it must be reimbursed.

5. The court erred in failing to hold that this is in substance a suit against the United States which in this behalf has refused to be sued.

C. EDWARD WRIGHT,
Attorney for Plaintiff in Error.

26 [File endorsement omitted.]

27 In Court of Appeals of District of Columbia

[Title omitted.]

Order allowing writ of error

Filed May 20, 1924

On consideration of the motion for the allowance of a writ of error to remove the above-entitled cause to the Supreme Court of the United States and to stay the mandate until further order, it is ordered by the court that said motion be, and the same is hereby, granted.

28 IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

Writ of error

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the Justices of the Court of Appeals of the District of Columbia, greating:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between Hubert Work, Secretary of the Interior, Appellant, and The United States of America ex rel. Chestatee Pyrites & Chemical Corporation, Appellee, a manifest error hath happened, to the great damage of the said appellant, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the 20th day of May, in the year of our Lord one thousand nine hundred and twenty-four.

[SEAL.] HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by ———

29 Citation in usual form showing service on Hoke Smith omitted in printing.

31 In Court of Appeals of the District of Columbia

[Title omitted.]

Præcipe for transcript of record

Filed May 20, 1924

The clerk will please to prepare a transcript of record on writ of error to the Supreme Court of the United States in the above-entitled cause and include therein the following:

1. The printed record in the Court of Appeals.
2. Minute entry as to argument of case.
3. The opinion
4. The judgment.

5. Petition for allowance of writ of error and assignment of errors.
6. Order allowing writ of error.
7. Writ of error.
8. Citation.
9. This designation.

C. EDWARD WRIGHT,
Attorney for plaintiff in error.

Service acknowledged this 16th day of May, 1924.

HOKE SMITH,
Attorney for defendant in error.

[File endorsement omitted.]

32 Court of Appeals of the District of Columbia

Clerk's certificate

I, Henry W. Hodges, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 31, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Hubert Work, Secretary of the Interior, Appellant, vs. The United States of America ex rel. Chestatee Pyrites & Chemical Corporation, No. 4116, April term, 1924, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 21st day of May, A. D. 1924.

[SEAL.] HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

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